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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/637,219

08/08/2003

Benoit Maison

YOR920030225US1

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EXAMINER

NEWAY, SAMUEL G

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

08/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/637,219 | Applicant(s) MAISON ET AL. | |
| | Examiner SAMUEL NEWAY | Art Unit 2626 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8,9,15,16 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8,9,15,16 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is responsive to the RCE filed on 21 July 2010.
2. Claims 8, 9, 15, 16, and 24 are currently pending and considered.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 15 and 16 are directed to a “computer program product, stored in a recordable type medium”.

As per the recent USPTO notice signed by director David Kappos on 1/26/2010: “The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319(Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim must

Art Unit: 2626

be rejected under 35 U.S.C. 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101, Aug. 24, 2009; p. 2.”

Since Applicant’s specification does not explicitly and expressly exclude non-transitory mediums, the scope of Applicant’s “computer program product, stored in a recordable type medium” includes signal-based mediums. A signal is a form of energy and does not fall within one of the four statutory categories of invention (*i.e., process, machine, manufacture, or composition of matter*) since it is clearly not a series of steps or acts to constitute a process, not a tangible physical article or object, which is some form of matter, to be a product and constitute a manufacture or a machine, and not a composition of two or more substances to constitute a composition of matter.

Amending the claim to recite a ‘computer program product, stored in a recordable type **non-transitory** medium’ would overcome this rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2626

6. Claims 8, 9, 15, 16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. (USPGPub 2003/0125955) in view of Poirier et al (USPN 6,321,372) in view of Donovan et al (USPN 6,072,951) and in further view of Enomoto (USPN 5,854,935).

Claims 8 and 9:

Arnold discloses a method, implemented in a data processing system, for generating task-specific code for pattern recognition ([0008]), the method comprising:

receiving task-specific input system data of a pattern recognition system and generating task-specific code for the pattern recognition system based on the task-specific input system data (“the distributed speech recognition system allows automatic “speaker adaptation” to be performed locally by the client device ... local parameters ... are adapted locally by the client device in performing its speech recognition function”, [0008], see also [0009] and “the client device is adapting its models in response to the speaker”, [0020]).

However, even if Arnold discloses that “the speech recognizer module ... can be represented by one or more software applications”, it does not explicitly disclose the software applications being source code.

Poirier discloses a similar method where a source code is modified, such as by further specifying it, in a linguistic service system. Poirier also discloses the code being compiled (“compile ... modified source code”, col. 10, lines 52-56).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to use a source code (which has to be compiled in order to execute

Art Unit: 2626

on a computer) as the software modules in Arnold's method in order to modify an existent source code in order to generate a more specified service (Poirier, col. 2, lines 26-36).

Poirier further discloses compiling the source code to form a decoder program ("compile ... modified source code to obtain service executable", col. 10, lines 52-56).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to compile a source code in order to obtain an executable file which is able to run on a computer (Poirier, "compile ... modified source code to obtain service executable", col. 10, lines 52-56).

Arnold and Poirier do not disclose profiling the decoder program and automatically modifying and recompiling the decoder program based on the profile.

Donovan discloses profiling a program similar to Poirier's decoder program and automatically modifying and recompiling the program based on the profile. (col. 1, lines 46-54).

It would have been obvious to one with ordinary skill in the art at the time of the invention to have profiled Poirier's decoder program and automatically modified and recompiled it based on the profile in order to optimize its performance using profile records (Donovan, col. 1, lines 46-54).

Arnold, Poirier, and Donovan do not explicitly disclose determining whether the decoder program is optimized and, responsive to the decoder program not being optimized, automatically modifying and recompiling the decoder program based on the profile.

Enomoto discloses determining whether a program is optimized (col. 7, lines 4-9) and, responsive to the decoder program not being optimized, automatically rearranging the program for more optimization (col. 7, lines 10-14).

It would have been obvious to one with ordinary skill in the art at the time of the invention to have determined whether Donovan's program is optimized and performed the automatic modifying and recompiling responsive to the program not being optimized in order to avoid unnecessary recompilation (see Donovan, col. 1, lines 34-36).

Claims 15 and 16:

Arnold, Poirier, Donovan, and Enomoto disclose the method claims 8 and 9, Arnold further discloses a computer program product, stored in a recordable type medium ([0054]), the computer program product comprising instructions for performing the steps of claims 8 and 9 as shown above.

Claim 24:

Arnold, Poirier, Donovan, and Enomoto disclose the method claim 8, Arnold further discloses an apparatus comprising a memory, wherein the memory contains computer readable instructions, and a processor ([0054]), wherein the processor executes the computer readable instructions for performing the steps of claim 8 as shown above.

Arnold does not, but Donovan does, explicitly disclose a bus to which the memory and processor are connected (col. 5, lines 13-17).

It would have been obvious to one with ordinary skill in the art at the time of the invention to have connected Arnold's memory and processor to a bus because that is how a standard computer's hardware architecture is implemented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL NEWAY whose telephone number is (571)270-1058. The examiner can normally be reached on Monday-Friday 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (571)272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/637,219
Art Unit: 2626

Page 8

/SAMUEL NEWAY/
Examiner, Art Unit 2626